

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DEBBIE JEAN MEYER

Appeal No. 2000-0553
Application No. 29/079,653¹

ON BRIEF

Before HAIRSTON, NASE, and KRATZ, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of the following design claim:

The ornamental design for a cake cutting knife as shown and described.

¹ Application for patent filed November 21, 1997.

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As seen in Figures 1 through 7, the uncurved top surfaces of the blades are flush with the top surfaces of the handle portions of the cake cutter, and the lower surfaces of the handle portions are in a near right-angle relationship with vertically extending portions of the blades. The cutting edge of the blades is straight, and this straight edge forms a rounded right angle with the vertically extending portions of the blades. The cutting edges of the blades are also in a parallel relationship with the top surfaces of the handle portions and the uncurved top surfaces of the blades. The top surfaces of the blades slope downwardly and meet at a V-shaped junction. The height of this V-shaped junction is less than the height of the two vertically extending portions of the blades.

The references relied on by the examiner are:

Haugland	2,600,646	June 17,
1952		
Harvey	D159,729	Aug. 15, 1950

The design claim on appeal stands rejected under 35
U.S.C.

§ 103 as obvious. As evidence of obviousness, the examiner
relies on Haugland because it "is similar to applicant's

[design] in overall appearance except for the handle, the blade being straight off the handle and a non-serrated blade," and Harvey because he shows "a handle and the blade being straight of [sic, off] the handle and a non-serrated blade similar to the claimed design" (paper number 5, page 2). The examiner states (paper number 5, page 2) that:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the reference to Haugland by substituting the handle, showing the blade straight off the handle and providing a non-serrated blade as taught by the reference to Harvey. The resulting article being strikingly similar to the claimed design. The claimed article fails to provide an appearance over the references to warrant patentability.

Appellant has listed a plurality of differences between the disclosed and claimed cake cutting knife design and the cake slicer disclosed by Haugland (Brief, pages 5 through 7). Appellant then argues (Brief, page 7) that "even though they are functionally similar, the article of the present invention is significantly different from the article of Haugland in overall ornamental appearance." With respect to the combined teachings of Haugland and Harvey, appellant argues (Brief, page 8) that "the Examiner has not pointed out any teaching or even remote suggestion in Harvey that the teachings thereof

would be applicable to a cake cutter device of the type to which the present invention (and Haugland) pertains." "That is, even though Harvey discloses a non-serrated blade and that the blade comes straight off the handle, these features are notoriously well known in the general knife art and there is still no teaching or suggestion in Harvey to apply these features to the cake slicer of Haugland to achieve the overall visual appearance and ornamental effect of the claimed present invention" (Brief, page 8).

In response to appellant's arguments, the examiner argues that Haugland is a proper Rosen² reference because it has "the same 'design characteristics' as the claimed design" (Answer, page 3), that "[w]hile there may appear to be a 'multitude of differences' it is still believed that the overall appearance of the claimed design is met by the prior art" (Answer, page 3), that "Harvey is believed to be a proper secondary reference as a knife is in the same U.S. class as a cake slicer/cutter, hence an analogous art and well within the knowledge of a designer with ordinary skill in the art"

² In re Rosen, 673 F.2d 388, 391, 213 USPQ 347, 350 (CCPA 1982).

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(Answer, pages 3 and 4), and that "the applied references are so related that the appearance of features shown in one would suggest the application of those features to the other" (Answer, page 4).

Reference is made to the brief and the answer for further detailed positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejection.

Appellant's arguments to the contrary notwithstanding, we agree with the examiner that Haugland is a proper Rosen reference, and that the cake cutter of Haugland and the knife of Harvey are "so related that the appearance of certain ornamental features in one . . . would have suggested application of those features to another." In re Cho, 813 F.2d 378, 382, 1 USPQ2d 1662, 1663 (Fed. Cir. 1987). For example, Harvey would have suggested a blade straight off the handle and a non-serrated blade to Haugland.

With respect to the other differences between the modified Haugland design and the disclosed and claimed design,

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we do not agree with the examiner that "these differences seem to be de minimis when taken as a whole" (Final Rejection, page 2). For example, the curved upwardly extending portions of the blades that join the lower portions of the handles in the modified Haugland cake slicer are very different from the substantially straight portions in the disclosed and claimed design. According to the appellant, "Haugland makes it appear that the handle is attached to an extension of the blade rather than directly to the blade as in the present invention" (Brief, page 6). We agree. Even with the blades straight off the handles, "the handles of the Haugland cake slicer curve outwardly" whereas the handles of the disclosed and claimed design are straight (Brief, pages 6 and 7).

In summary, the overall ornamental appearance of the claimed design is not suggested by Haugland and Harvey.

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DECISION

The decision of the examiner rejecting the design claim
under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES

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PETER F. KRATZ)
Administrative Patent Judge)

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APJ HAIRSTON

APJ NASE

APJ KRATZ

DECISION: REVERSED

Send Reference(s): Yes No
or Translation (s)

Panel Change: Yes No

Index Sheet-2901 Rejection(s):

Prepared: July 24, 2000

Draft Final

3 MEM. CONF. Y N

OB/HD GAU

PALM / ACTS 2 / BOOK

DISK (FOIA) / REPORT